

## ANALYSIS OF AMENDED BILL

### Franchise Tax Board

Author: Benoit Analyst: Matthew Cooling Bill Number: SB 404  
Related Bills: See Legislative History Telephone: 845-5983 Amended Date: April 14, 2009  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Earned Income Tax Credit/Employer Notification To Qualifying Employees

### SUMMARY

This bill would specify that employers must notify employees who earn less than \$50,000 in gross annual salary that they may be eligible for the Federal Earned Income Tax Credit (EITC).

### SUMMARY OF AMENDMENTS

The April 14, 2009, amendments removed intent language related to Alternative Workweek Schedules. The amendments added language that would specify which employees must be notified of possible eligibility for the EITC. The amendments would also make other changes to the Labor Code relating to employee wage notification that do not impact the department and are not discussed in this analysis.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to do the following:

- Reduce employer confusion regarding the requirements for employees who are salaried versus hourly,
- Increase flexibility in the method of reporting, and
- Reduce business waste and redundancy by allowing employers to notify employees of the potential eligibility for the EITC based on an employee's gross annual salary.

### EFFECTIVE/OPERATIVE DATE

Assuming enactment in 2009, this bill would be effective and operative as of January 1, 2010.

### POSITION

Pending.

Board Position:	Department Director	Date
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## **ANALYSIS**

### **FEDERAL/STATE LAW**

Existing federal law allows a refundable income tax credit for low-income working individuals and families, known as the EITC. This credit reduces the amount of federal tax owed and can result in a refund if the EITC exceeds the amount of the tax liability.

The amount of the EITC is prorated based on income and begins to phase out at certain income levels. For the 2008 tax year, the adjusted gross income (AGI) must be less than:

- \$38,646 with more than one qualifying child, or \$41,646 for married filing jointly;
- \$33,995 with one qualifying child, or \$36,995 for married filing jointly; or
- \$12,880 without a qualifying child or \$15,880 if married filing jointly.

For tax year 2008, the maximum credit allowed is:

- \$4,824 with two or more qualifying children;
- \$2,917 with one qualifying child;
- \$438 with no qualifying children.

Through its Stakeholder Partnerships, Education, and Communication organization, the IRS currently provides EITC information with utility bills, school report cards, Forms W-2 (Wage and Tax Statement), Forms 1099 (payment reporting for various sources), and company newsletters; through direct mailings by housing authorities and social service agencies; and through advertising, workshops, seminars, and neighborhood outreach.

Current state law does not provide a credit comparable to the federal EITC. Current state law requires any employer that is required to provide unemployment insurance to employees to notify all employees that they may be eligible for the EITC. The employer must give notification to the employee within one week before or after Form W-2 (Wage and Tax Statement) or Form 1099 (Miscellaneous Income) is provided.

Current state law also specifies that the notification provided must contain the following information:

- Instructions on how to obtain any notice available from the IRS for this purpose, including but not limited to IRS Notice 797, or any succeeding notice or form; or
- Any notice created by the employer, as long as it contains substantially the same language as IRS Notice 797 or as referenced in R&TC section 19854(a).

### **THIS BILL**

This bill would specify that employers must notify all employees who earn a gross annual salary of \$50,000 or less that they may be eligible for the EITC.

This bill would also make technical changes to the Labor Code related to the information required to be furnished to employees each pay period.

## IMPLEMENTATION CONSIDERATIONS

Because the State Controller's Office handles the payroll notification required under this provision for the department, implementing this bill would not impact department programs or operations.

## TECHNICAL CONSIDERATION

Generally, laws imposing requirements on employers in relation to their employees are found under the Unemployment Insurance Code and are administered by the Employment Development Department. To prevent confusion among employers regarding where they might seek assistance for questions related to the requirements of this bill, it is recommended that these provisions be moved to the Unemployment Insurance Code.

## **LEGISLATIVE HISTORY**

AB 650 (Lieu, Stats. 2007, Ch. 606) requires any employer that is required to provide unemployment insurance to employees to notify all employees that they may be eligible for the EITC.

## **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Illinois* requires an employer to notify qualifying employees, whose gross wages are less than the maximum amount required for EITC, that they may be eligible for the program.

*Florida, Massachusetts, Michigan, Minnesota, and New York* do not require employers to notify their employees that they may qualify for the federal EITC.

## **FISCAL IMPACT**

This bill would not impact the department's costs.

## **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

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